

DOCUMENT RESUME

02094 - [A1232227]

[Protest of Determination of Bidder Nonresponsiveness].
B-188223. May 2, 1977. 3 pp.

Decision re: Modern Moving and Storage, Inc.; by Robert F.
Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services:
Reasonableness of Prices Under Negotiated Contracts and
Subcontracts (1904).

Contact: Office of the General Counsel: Procurement Law I.

Budget Function: National Defense: Department of Defense -
Procurement & Contracts (058).

Organization Concerned: Department of the Army: Rock Island
Arsenal, IL.

Authority: 4 C.F.R. 20.2(b)(1). A.S.P.R. 7-1601.7. A.S.P.R.
2-406.2. 48 Comp. Gen. 685. 49 Comp. Gen. 553. 54 Comp. Gen.
271. 54 Comp. Gen. 275. B-172573 (1971). B-185034 (1976).

Protester objected to determination of
nonresponsiveness and contended that the information requirement
of minimum daily capabilities was unrealistic. The untimely
protest was denied on its merits. (SS)

02094

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

*D. Hanfurther
Proc I*

FILE: B-188223

DATE: May 2, 1977

MATTER OF: Modern Moving and Storage, Inc.

DIGEST:

1. Protest against alleged impropriety in invitation is untimely filed under 4 C.F.R. § 20.2(b)(1) and is not for consideration as it was not filed until after bid opening.
2. Bid, which did not include bidder's guaranteed daily capability for performing desired services, was properly determined to be nonresponsive, and correction of error under ASPR § 2-406.2 was properly not permitted since such procedures are inapplicable to nonresponsive bids.
3. Fact that Government may have obtained pecuniary advantage if it had permitted correction of low nonresponsive bid is not controlling factor as maintenance of integrity of competitive bidding system is more in public interest than is such pecuniary advantage.

Modern Moving and Storage, Inc. (Modern Moving), protests the rejection of its bid by the Rock Island Arsenal (the contracting activity) under invitation for bids No. DAAA08-77-B-0008. The bid of Modern Moving was found to be nonresponsive since the bidder failed to include with its bid the information regarding its "Guaranteed Daily Capability" for each schedule area bid on as was required under Part II, Section J of the invitation Special Provisions.

Modern Moving contends that this informational requirement should be ignored inasmuch as the minimum acceptable daily capabilities required by the contracting activity are unrealistic. As an alternative, Modern Moving contends that its failure to provide such information was merely a clerical error which may be corrected since the invitation did not provide adequate notice of this requirement and since the Government will allegedly save a considerable sum of money by accepting the lower Modern Moving bid.

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First, regarding the allegation that the minimum acceptable daily capabilities required by the contracting activity were unrealistic and consequently should not be used for this invitation, the Bid Protest Procedures of our Office, specifically 4 C.F.R. § 20.2(b)(1) (1976), require that a protest based upon alleged improprieties in an invitation, which are apparent prior to bid opening, must be filed prior to bid opening. Since the alleged impropriety raised in this instance was apparent prior to bid opening and the protest was not filed until after bid opening, the protest on this issue was untimely filed and will not therefore be considered on its merits.

As regards the contention that inadequate notice was given as to the need to provide the capability information with the bid and that, therefore, the failure to so provide it constituted a clerical error correctable after bid opening, we cannot agree. Almost immediately in front of the pages on which bid prices were to be inserted was the following provision:

"AWARD (1970 MAY)

"Award shall be made to the qualified low bidder by area under each of the specified schedules to the extent of his stated guaranteed daily capability as provided herein and the clause entitled 'Estimated Quantities.' * * *" (Emphasis supplied.)

Two provisions before the award provision the following was set forth:

"ESTIMATED QUANTITIES--This solicitation contains clause ASPR 7-1601.7, Estimated Quantities, which must be completed by offeror (See Section J) - Special Provisions."

The Estimated Quantities clause clearly states that:

"(b) * * * Bidders must complete the Bidders Guaranteed Daily Capability, which must equal or exceed the Government's minimum acceptable daily capability * * * Failure to do so will render the bid nonresponsive."

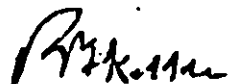
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Although the Estimated Quantities clause and the page for filling in the guaranteed daily capabilities were 11 and 12 pages after the pages upon which bid prices were to be inserted, we believe that the fact that all bidders were advised directly before the pricing pages of the need to consult these pages and to abide by this requirement constituted adequate notice thereof.

Concerning the contention that the omission of this information from the Modern Moving bid constituted a clerical error subject to correction, we have held that a bid which either limits, reduces, or modifies the obligation of the bidder to perform in accordance with the terms of the invitation is nonresponsive. 48 Comp. Gen. 685 (1969); 49 Comp. Gen. 553 (1970). The instant procurement envisions a promise from the bidder to, at least offer services equaling the Government's minimum acceptable daily capability. By not filling in such information Modern Moving did not bind itself to such requirement. Therefore, its bid reduced the desired obligation for which the Government wished to bind an awardee. In view thereof, and since the invitation warned bidders what the result would be for failure to so advise, the Modern Moving bid was correctly determined to be non-responsive. See B-172573, July 24, 1971. Regarding any proposed correction of this error, correction pursuant to paragraph 2-406.2 of the Armed Services Procurement Regulation (1975 ed.) is not permitted when a bid is nonresponsive. A. C. Ball Company, B-185034, April 13, 1976, 76-1 CPD 249.

Finally, with a view to the contention that correction of the bid should be permitted since it would save the Government money, we have held that the maintenance of the integrity of the competitive bidding system is more in the public interest than the pecuniary advantage to be gained in a particular case. Matter of A. D. Roe Company, Inc., 54 Comp. Gen. 271, 275 (1974), 74-2 CPD 194.

Accordingly, the protest is denied.


Deputy Comptroller General
of the United States